मापदण्ड तय करना चाहिए। मैं रोक लगाने का पक्षधर नहीं हूं लेकिन कुछ मापदण्ड तय हों कि आखिर पब्लिक इंटरेस्ट लिटीगेशन की एक्सेप्टेबिलिटी के लिए क्या व्यवस्था हो। हमारे मान्यवर विधि मंत्री जी बहुत सुलझे हुए हैं और बहुत परिपक्व विचारधारा के हैं। मुझे विश्वास है जब हम इस विषय पर चर्चा कर रहे हैं तो वे बीच में कुछ इस प्रकार का उपाय निकालेंगे कि इज्जतदार लोग बेइज्जत न हो पाएं। लोक राजनीतिक प्रतिशोध न ले पाएं, पेशेवर वकील इसे केवल प्रचार का माध्यम बनाने के लिए इस प्रकार की व्यवस्था न करें, तो ऐसी कोई व्यवस्था वह करने की कोशिश करेंगे और जब पब्लिक इन्टरेस्ट लिटीगेशन गलत साबित हो जाता है तो जो दायर करता है उसके खिलाफ कड़ी सजा का प्रावधान हो सके, ऐसी व्यवस्था करेंगे।

इसलिए मैं इस विधेयक पर विचार करने लिए प्रस्ताव करता हूं।

The question was proposed.

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): थैंक यू पचौरी जी।

अब अगर सदन की अनुमति हो तो मैं श्री एम०ए० बेबी जी का जो बिल था वह बिल पिछले हफ्ते कोरम की वजह से नहीं हो सका, तो उस संदर्भ में हमारे मंत्री जी यहां जवाब देने के लिए तैयार बैठे हुए हैं। अगर आपकी अनुमति हो तो मैं उनसे जवाब देने के लिए कहूं? और फिर आगे उसके बाद आपके इस रेज़ोल्यूशन पर बात करेंगे।

SHRI R. MARGABANDU (Tamil Nadu): I would like to say one thing. I was given to understand that two hours is fixed for the discussion of a Private Member's Bill. You are allowing these Bills. The next Bill is mine. We may not be having any time at all. How long can a Private Members' Bill be discussed for years together, depriving the opportunity of others? I would request that my Bill be taken up.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): I have taken note of your statement. I request the Minister to reply on this Bill.

THE CONSTITUTION (AMENDMENT) BILL, 1992
(to amend article 77) contd.

THE MINISTER OF STATE OF THE MINISTRY OF LAW AND JUSTICE (SHR RAMAKANT D. KHALAP): Madam, I thank you for permitting me to reply to this debate and I also thank my Prime Minister for providing me this opportunity. In fact, hon. Prime Minister himself wanted to reply to this very improtant debate on the Bill initiated by hon. Member, Shri M.A. Baby. But as circumstances would have it, the Prime Minister is held up in other important duties. Hence permit me to say a few words on this debate. Madam, it is now 50 years since our Constitution was enforced. For 50 years we have experimented with our form of democracy and in these 50 years we have very successfully charted the course of our internal as well as our external relations. During these 50 years a number of treaties have been signed with a number of countries. And at least to my knowledge there has been no occasion when the Parliament or the people at large had any grievance about the activities of our Governments. Particularly in foreign affairs it has been well acclaimed that almost every step that was taken by our Government in the past, almost every treaty that was signed by our Government in the past, until today has been in the interest of our country. Ours in not the only country where such a situation exists. When we enacted our Constitutions in Article 253 we stated:

> "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

This article very clearly tells us, Madam, that in case any treaty is to to be implemented in our country and need to be ratified by way of a law, then the law is enacted for that purpose. This means that the House has always been taken into confidence by the Government before such treaties become part of our law. There are other types of treaties where also, as soon as these treaties are entered into by our Government with foreign countries, it has been the practice to lay them before the House. It has been the practice in case of importance treaties to take the House into confidence and tell the House what exactly has been done in the realm of foreign affairs. We inherit the system from the Mother Parliament of England. Although other friends did cite a few examples about different countries where a different type of provision exists, there are other countries where the system which we follow in our country is being followed. I can give a number of examples of such cases.

I can cite a number of exampels among the Commonwealth countries. In the United Kingdom itself, the treaty-making power is vested in the Crown as a part of the royal prerogative and the Parliament's control over the conclusion of the treaties does not prevail. This is the situation which exists in the United Kingdom and we have drawn inspiration, I believe, also from this system which prevails in England.

In Germany, treaties are concluded as an executive act.

Much has been said about the situation prevailing in the United States. Madam, the comparison with the US, in my opinion, has not been properly done by some of our learned Members. In the US, treaties are being strictly divided into two parts-treaties which need to be ratified by virtue of a law and treaties which have been described as executive acts. The American Constitution says that the treaties to be concluded on behalf of the US require the consent and approval of the Senate. But beyond the treaties the consent and approval of the Senate. But beyond the treaties which require to be concluded by the consent and approval of the Senate, there are treaties which are described as executive acts or executive agreements and this type of agreements form a major chunk of the treaties which are concluded between the US and so many other nations.

Regarding the position in France, I may refer to article 52 of the French constitution of 1958. There, the President negotiates and ratifies, as informed of all negotiations before the conclusion, an international agreement and it is not subject to ratification.

In Thailand, the treaty-making power, in practice, is exercised by the Executive subject to the Constitutional requirement of its supervision and ratification only in a few cases.

In the Russian Federation, the drafting, negotiations, concluding ratifications and entry into force of treaties is done in the name of the Russian Federation. However, they are subject to a special Federal Law on International Treaties of the Russian Federation. This law does not require consent of the legislative authorities to the Executive to enter into any negotiations and conclusion of treaties.

In Canada, the Federal Government has the exclusive responsibility for the conduct of the external affairs. Any international agreement entered into by Canada which requires a legislation for the purpose of its implementation is brought before the parliament the way we do it in our country.

In Liberia, the President enjoys the supreme executive power to make treaties. The exception is that the Senate has to agree by a vote of two-thrids of the Members present.

The position in Cuba is the same. These are some of the provisions in different countries. Madam, in the debate

which we went through in this House, we were told about some practical difficulties. The practical difficulties basically relate to certain types of treaties which in the opinion or our Members should have been first notified to the members of this House. Although on the face of it this argument appears to be quite a sound argument, in my opinion, because of the type of democracy that we have adopted and the type of Constitutional provisions that we have, this requirement is not of a type that somebody can say that it must be resorted to before enacting any treaty. The Government, as has been the practice here, has always laid on the Table of the House every Treaty which has been concluded wherever it has been considered to be a treaty of great public importance. Now, I can cite the Tashkent Declaration of 1966, the Indo-USSR Friendship Treaty of 1971, the Shimla Agreement of 1972 and very recently the treaties like CTBT and WTO were not only laid before the House, but these were also discussed in this very House.

SHRI TRILOKI NATH CHATURVEDI (Uttar Pradesh): No, you never discussed them in this House, Mr. Minister. It is a matter of fact. Otherwise, I wouldn't have intervened. I always like to listen to what you say. But I am afraid there is something wrong so far as the factual position is concerned. WTO or GATT were never brought before the House. And this was our actual grouse and grievance.

SHRI V. NARAYANASAMY: (Pondicherry): These were not brought here by the Government. But there were Calling Attention Motions, etc. and the House discussed them and the Ministers also relplied.

SHRI TRILOKI NATH CHATURVEDI: But on the treaties as such the House was not taken into confidence. That was one of the complaints in the House. And probably that is the reason why Mr. Baby has brought this Bill.

SHRI RAMAKANT D. KHALAP: I stand corrected, Madam. I was not a Member of this House. But my impression is that these treaties have been discussed in the Parliament.

Madam, if we accept this principle, a great problem arises that there will be such fetters on the powers of the executive that it may not be possible for a great country like ours to enter into any treaty with foreign powers. In this very month almost every day, as far as my information goes, one or the other foreign dignitary is landing in our country. They are discussing various matters with our Government. A number of treaties are also being entered into. If all these treaties and agreements have to be discussed in this House before these are conlcuded. I don't think that our Foreign Ministry would at all be able to work. That is why I say that the popular verdict that elects and brings the Government into power, itself gives this authority to the Government to enter into treaties. Now, no Member in this House has been able to show whether any treaty so far has affected the interests of our country. I was very carefully listening on the last two or three occasions when these arguments were going on in this House. Not a single Member has been able to show it in that sense. Of course, perceptions of the impact of any treaty may be different. But nobody had said that the treaties that were concluded were not in the interests of the country.

Madam, I also have a list of legislations passed by Parliament for implementing India's treaty obligations. I want to mention this because as and when a treaty has been executed, the Government has come to the House, wherever it was required to enact a law so that treaty becomes a legal obligation, a constitutional obligation.

This is quite a long list. But I will

venture to name a few of them. The United Nations (Priveliges and Immunities) Act, 1947 was enacted by the Parliament. Then we have the Geneva Conventions Act, 1960, the Vienna Convention (Diplomatic Relations) Act, 1972, the Tokyo Convention Act, 1975, the Anti-Hijacking Act, 1982, the Suppression of Unlawful Acts Against the Safety of Civil Aviation Act, 1982, the International Development Association (Status, Immunities and Privileges) Act, 1960, the International Monetary Fund and Bank Act, 1945, the Foreign Awards (Recognition and Enforcement) Act, 1951, the Chandranagar Merger Act, 1954, United Nations Security Council Act, 1947; the Narcotic Drugs and Psychotropic Substances Act, 1985; the Anti-Apartheid Act, 1981; the SAARC Convention (Suppression of Terrorism) Act, 1993; Extradition (Amendment) Act, 1993; International Finance Corporation (Status; Immunities and Privileges) Act, 1958; the Constitution (Ninth Amendment) Act, 1960; the Asian Development Bank Act, 1960; the African Development Fund Act, 1982; African Development Bank Act, 1983; Carriage by Air Act, 1972; Merchant Shipping Act, 1958. This is the list of some of the enactments that this Parliament has passed so that the treaty obligations get a constitutional and statutory status.

The legislative intent also has to be taken into consideration. Madam, whatever treaty that the Government enters into, as I have said earlier, is in the interest of this country and there is no intention on the part of the Government, any time, to bypass the Parliament, bypass the hon. Members of these two Houses. Then, one has also to proceed on the basis of a certain amount of faith. I have explained the practical difficultics. If I want to repeat the practical difficulties once again, I will say that it is not possible, virtually it is impossible, for any Government to come to the House before every treaty is enacted. It is not even possible to the U.S.A. which was cited as an example. Therefore, in the U.S.A. they have organised and developed a system which they call the Executive Agreement and a very few treaties really are to be ratified by the U.S. Senate. This is also the position in many other countries where the position similar to the U.S.A. is seen. Therefore, I would request Mr. Baby that though his aprehensions are not entirely unfounded--I would say that considering the type of democratic set-up that we have accepted, considering the multifarious duties which the Government has to carry on, the Government has to execute, considering the whole comity of nations with which we have to interact and enter into various agreements, contracts and treaties on various occasions and considering the multitudes of subjects on earth that have to be taken care of by the Government--please don't make it incumbent upon the Government to come to this House every time before any agreement is reached. These are the practical difficulties and since the Government is always before you and the Government is transparent and the Government wants to take into confidence the Parliament about every treaty and every agreement it has to sign, this House enjoys its supremacy, enjoys its greater power so far as these aspects are concerned. Whenever you find--as you have always been being in the past--that any treaty needs to be discussed in this House, the right of the Member has never been taken away, the right of the House has never been taken away. Therefore, please refrain from creating these fetters upon the freedom of the Government to deal with the countries abroad, the nations abroad. I would, therefore, request you not to press your Bill when the purpose and intent is known. The Government, certainly, will, whenever necessary, come before the House, take the House into confidence, tell the House what they have done and what they are doing. So, I hope their

fears are allayed by the explanation which I have tried to give. I once again request Shri Baby to kindly co-operate and agree to withdraw his Bill and not to press it.

SHRI TRILOKI NATH CHATURVEDI: Madam, I have to make a request. Of course, this Bill has been moved by Shri Baby and it is the property of the House; if agreed, the needful will be done by Mr Baby. But, I have to seek just three clarifications from the hon. Minister. Madam, in the first place, I do not want to be facetious, but, I mean it seriously. The hon. Minister has talked about ...*(Interruptions)*...

SHRI M.A. BABY (Kerala): You can speak after my reply. ...*(Interruptions)*...

SHRI TRILOKI NATH CHATURVEDI: I think it will also enable you to take note of these things. ...*(Interruptions)*... The hon. Minister has thrown more light on the fragmented popular verdict. I do not want to go into it in detail except to say that very often it was disputed by the Hon. Minister himself when we were discussing article 356 or many other such things. But, the real popular verdict is that the House as a whole has accorded its approval to this Bill. Now, there is another thing which requires a little bit of consideration. He has said that so many visitors are coming and so many treaties are being considered. But, as far as international treaties are concerned, a lot of preparatory work is done before they are formally entered into. We are all aware of this fact. All these things are not finished just within 24 hours. Madam, as you are aware, the Indo-Soviet Friendship Tearty took four or five years. Suddenly there was an aggression on the erstwhile East Bengal by Pakistan and there was people's upsurge there. That is why India entered into the Indo-Soviet Friendship Treaty. Discussions took place on this Treaty almost for a period of ten years. Then the Prime Minister sent Mr. D.P. Dhar for this Treaty. It did not happen all of a sudden.

The other thing that I would like to mention is that very often we find -- I do not know about the other House; unfortunately, the Parliamentary Minister or his State Minister is not here—that we are short of business. I think this will also provide the Government a good business. The Government can organise its business in a better way. A lot of money which is being spent on ...*(Interruptions)*...

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Chaturvediji, I was going through the procedure...*(Interruptions)*... I think you have already spoken...*(Interruptions)*... Whatever questions you want to put, please put them in brief....*(Interruptions)*...

SHRI TRILOKI NATH CHATURVEDI: My first question is with regard to the impact of these treaties. So for as Mr. Baby is concerned, he can go into their merits. Hardly any study has been made about the impacts of the many treaties, particularly the economic treaties. If the treaties are discussed in Parliament, then we can solve many difficulties. For example, you take the Mahakali Treaty. Now, there is a dispute that certain things should have been done. Fortunately, they have not been done. Therefore, there is a lot of discontent. If the Mahakalik Treaty had been discussed, then we would not have said that you take these steps or this follow-up action. We would have said that we wanted friend with our neighbouring countries and you should proceed in this regard. They are complaining that the DPR project which was promised by India to be prepared within six months has not been prepared. I have heard it, heard it, not only in conferences and seminars in Kathmandu and India but some Ministers of Nepal themselves have also said this. Now, the latest example in

the Chemical Weapons Treaty which should have been brought for ratification by the Foreign Ministry, but it was done by the Chemical Ministry. Nobody knew it. The US did not ratify it. Suddenly we woke up. Pakistan, our neighbour, did not ratify it. Suddenly our Foreign Ministry issued a statement that we could withdraw if necessary. Now, this kind of a situation would not have arisen, if it had been discussed in the Parliament. We suddenly woke up when USA, Pakistan, Russia and even China did not sign it. Then again we backed out. This kind of a situation not only causes embarrassment to the Government but to the entire nation. This embarrassment could have been avoided if the Chemical Weapons Treaty had been discussed and approved in the Parliament and approved by it on the basis of its merits.

SHRI M.A. BABY: Thank you very much, Madam, for having permitted me to sum up my observations by way of reply to the debate as the mover of the Bill. First of all, I would like to thank the Chair, not only, you Madam, but all others who have occupied the Chair during the debate. They have been very helpful in having a serious debate on this topic. Similarly, I would be failing in my duty, if I do not refer to the support and cooperation extended by the Secretariat. In fact, the detailed discussion that we could have on this particular Bill, would not have been possible if the Secretariat has not been sufficiently vigilant. Therefore, I would like to place on record my sincere sense of thanks. Madam, there were 35 speakers on this Bill which may, perhaps, be an extraordinary record so far as discussion on various Bills is concerned. I am very thankful to all those who have participated in this debate, including the final reaction which has been presented before us on behalf of the Government by my very erudite colleague and respected Minister, Shri Ramakant Khalap. There were a couple of very important interventions that took place during the course of the debate. I do not want to mention all the thirty-five names; all of them made a very significant contribution. Shri Pranabji has made a unique intervention and the same has been appreciated by the present hon. Prime Minister who was External Affairs Minister at that point of time. Madam, Shri Gujaralji was supposed to reply to this. He also complimented the debate by stating that he would like to have more time to go through the entire debate so that he would be in a position to do justice when he actually replied to the debate. Unfortunately, due to other preocuptions, he could not fulfil his assurance. I understand that, Justifiably. having stated so, I am sorry to state that I may not be in a position to accept the demand made by Khalapji that the Bill should be withdrawn. I may do so, provided he gives me certain assurances, in all seriousness, with regard to carrying out some of the essential understandings of the Bill. Firstly, at the beginning as well as at the conclusion, the hon. Minister said, "He us against this Bill because this would put fetters on the Executive." With due respect to my hon. Minister colleague I would like to say, the Parliament should never be considered as a fetter on the functioning of the Executive. Madam, when we try to assess the situation in a democracy, I do not think that there will be two opinions if I submit that the sovereignty lies with the people. Since the sovereignty lies with the people, every now and then, we cannot refer back to the people. There should be a democratic mechanism. That is why the humanity in its genius developed a system of adult franchise and democratic accountability through Parliament. We are accountable to people once in every five years, through that does not hold good very strictly in the case of Members of the Rajya Sabha. But, indirectly, we are also accountable and responsible to the people. Madam, even though we have very serious reservation and criticism about the inadequacies of the parliamentary democratic functioning, when we state

that there is a lot of scope for further fine tuning of the parliamentary democratic system, it is for strengthening it with more democratic inputs. Our system has been functioning, to a great extent, on the right and healthy road. At the same time, I would like to submit that, time and again, we identify certain inadequacies in the Constitution itself. That is why Government itself had to move Constitution Amendment Bills. How many times we have changed the Constitution? How many times we have amended the Constitution? Therefore, the Government itself had realised the necessity for amending the Constitution.

Madam, we have the system of Private Members' Bills. It is not that the intention behind a Private Member's Bill was never taken cognisance of by the Government. There were occasions—I would hastily add—where, rightly or wrongly, the sense of Private Member's Bill has been taken cognisance of by the Government and certain changes have been brought about.

On the question of treaties being ratified by Parliament, I would like to point out that in many countries, they have gone a step further. They have the system of referendum. For example, in the case of the Maastricht Treaty, there was a referendum. That means, further expanding the scope of Parliamentary accountability. This is our experience.

Now, I would like to make one factual correction with regard to the formulation made by my erudite colleague, Khalapji. He said that there were no occasions when any legislation, as a fall-out of any international treaty or obligation, was rejected by Parliament. This statement of his is factually wrong because this House, the Rajya Sabha, had rejected the Patents Bill, which was passed by the other House. The Patents Bill, as you know, was a fall-out of the WTO; GATT negotiations and the WTO. Here comes the crux of the matter, Madam. The hon. Minister has given an explanation. Of course, he is right in a way. This is what is being practised now; when an international treaty is signed, to give effect to that international treaty, the Government has to come to Parliament, as per article 253 of the Constitution.

I would like to make a serious observation with regard to, firstly, the damaging possibility of article 253 itself. It says:

> "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

This paricular provision, if it is used without caution and restraint can even destroy the basic character of the Constitution which has three Lists, defining the legislative powers—what lies with the Central Government, what lies with the State Governments, and what lies in the Concurrent List where both the Central and the State Governments can, the Parliament as well as the State Legislatures can, legislate.

Even there, even in regard to the Concurrent List, the Constitution provides that if there is a clash of interests between a legislation passed by Parliament and a law passed by a State Legislature, the legislation passed by Parliament would sustain. But that is not point. In order to give effect to an international treaty, Parliament can pass a legislation even on a matter which falls within the ambit of a State Legislature. This is the point where I would say that, if article 253 is used without caution and restraint, the authority, the legislative authority, if a province, of a State, can also be usurped by Parliament, without the knowledge of the State Legislature.

It was on the basis of this consideration that some State Governments went to the

Supreme Court with a writ petition, saying that the GATT negotiations dealt with agriculture subsidy, which was directly linked to the future of farmers, which had a direct link to the interests of the States in the field of agriculture. The States said that their authority would be tampered with. That is why some State Governments went to the Supreme Court.

Now, another aspect mentioned by Khalap Saheb is that the Government has to come to Parliament to get the legislation passed, to give effect to certain provisions of an international treaty. Madam, since that is the case, why is it not directly done? This is my simple question. If it is directly done, as has been argued by some of my colleagues, the executive itself will get further strengthened at the negotiating table. Then the executive can very easily tell those who are representing international organisations or other countries that "some of the provisions in a particular treaty are very, very strongly against the interests of my country, and my national Parliament is not going to give legislative approval if this particular treaty is signed by them; therefore, you have to tone it down." Madam, therefore, my contention is—as has been mentioned by many of my hon. colleagues—this ratification provision is only going to strengthen the hands of the executive.

Now, quickly, I would like to come to the question of how democratic mandates have been given to the executive and, therefore, the executive having democratic rights to enter into treaties. At least, a representative of this Government should not have stated that the Government is in office with a popular democratic verdict. Though my party and I are part of the United Front, which is running the Central Government, I am truthful enough to submit that this United Front as such does not have a mandate from the people, this United Front does not have a majority in Parliament. Unfortunatley, we have to depend upon some political party, on which how far one can confidently depend upon I don't know—and I don't want to make any observation—because there will be fateful Easter Sundays in the future also. I would like to leave it at that.

Therefore, Madam, the political situation that has emerged in our country today politically demands that it is necessary for the executive to have legislative control and checks even in the matter of signing international treaties. We may have minority Governments. People in their wisdom may decide that no political party or no political alliance should have the majority. I feel that, perhaps, if you try to read the mind of the people who voted in the last elections, may not be consciously but unconsiciously—and there is even talk about the"the collective unconscious"—I don't know whether it is the operation of the collective unconscious which gave this verdict, as a result of which each major political party was told by the Indian people, "We are not prepared to buy your arguments fully; you better try to understand each other and run the country on the basis of some consensus." This is the only reasonable explanation that you can give to the results of the last election. When that is the case and there is no guarantee that similar situations won't emerge in the future, and overall political trends show that there would be many more future election results coming almost on the same lines, maybe with some small changes only, it is all the more important that the executive, which happens to be there by virtue of a peculiar political situation, should not arrogate to itself the entire power to go and sign any treaty left, right and centre.

After having stated so, I want to say that I am not questioning the patriotism of those who go in for international negotiations; that is not my idea. But we have to be very clear. This is a time when so much of pressure is being exerted by certain political forces. Just to drive

home my point, I would like to recall that some countries are forced to retreat from the treaties that they had signed as sovereign nations with other countries.

[The Vice-Chairman (Shri V. Narayanasamy) ***in the Chair]***

Here I refer to the agreement which India and the erstwhile USSR had entered into on transfer of the cryogenic rocket technology. The entire world knows this. It was not on Russia's sweet will that it retreated from transferring the cryogeic rocket technology to our country. It is a well-known secret that it was the arm-twisting by the United States of America that made Russia to go back from the treaty or the agreement which it had signed with India.

Sir, it is very clear that we are today living in an unjust world. The country which speaks of bringing globalisation and removing trade-barriers, intends to gobble up other countries and to make the rest of the world as its last republic. That is its actual intention, visible or invisible. Since direct occupation is not possible, it wants to establish, through economic occupation, a new wrold disorder to its liking. It wants the world to move as per its order. That is its new world order. Those who have been speaking about breaking the trade-barriers and speaking in defence of the Dunkel's GATT proposals and the World Trade Organisation, are still continuing with their own National Act which has extra-territorial implications.

Sir, I refer to the recent news report that the United States of America Administration wants to keep India in a list of nine countries or so, which are to be closely monitored as countries which may violate the patent and copyright provisions. This was the report. We have raised this in this House. Therefore, Sir, unfortunatley, there are such forces in the world today.

This world can live in peace. If the humanity has sufficient wisdom to put its resources, wisdom and intelligence together to solve its own problems, there is so much of resources available in the world. So much of goods and services is available, and so much of foodgrains is being produced. There is no necessity for anybody to go hungry. There is no reason in the present day world for anybody to go without medical care or medical attention. Still an unjust world order continues to prevail. Due to the exploitation and suppression of the developing countries by super powers, a totally inhuman and unjust living condition exists today in this beautiful planet. Therefore, in such a condition, it is incumbent on the part of every developing country to protect its own interests.

Now, even though the kind of imperialist domination which was possible in the last century, is not possible today, the same forces are trying to continue with their world domination through trade treaties. Instead of having wars, instead of marshalling armies, trade treaties are basically used today by the North to subjugate the South, the developing world.

Sir, on the basis of the clear-cut signals, which were available, as has been rightly pointed out by many hon. colleagues here, and in the wake of the G.A.T.T. negotiations, the developing countries of the third world were united against the view of the West. In this connection I give full credit to the first few years of the Rajiv Gandhi Government. The then Foreign Minister of the Rajiv Gandhi Government represented India in the first round of Uruguay round of negotiations. There India was holding high the interests of the developing world. It was relentlessly defending their interests. But, I am sorry to state that for a variety of reasons we, at some point of time, succumbed to the pressures from the powerful West led by the United States. I do not want to elaborate how, when and because of what reasons it so happened. Today I do not want to apportion blame on anybody.

But, I am one with many of the hon. Members here that in such a situation there is a necessity to have certain provisions either in the Constitution or somewhere else stating that whichever Government comes to power at the Centre, should go there armed with a piece of legislation and say, "There is a National Parliament in our country. We have to go back to it and take its approval about what we are to sign there. So, don't try to dictate terms. The provision that you want to incorporate in the treaty may be questioned in the Parliament and it may not accept it." This is the argument others are utilising.

Sir, I am thankful to Margaret Alva Ji, who participated in this debate and has supported the Bill stating that when she was a Minister, she herself had to go and sign many treaties. On the basis of her experience as a Minister and as a leader or a participant in international negotiations which culminated in treaties, she left that this kind of a Constitution Amendment or some similar provision somewhere is the need of the hour.

Sir, I wish Gujral Ji was present here, because I have now to make some references to Gujral Ji. I have a report presented by the present Prime Minister, not as Prime Minister, but in his capacity as Chairman of the Department-Related Standing Committee on Commerce 1993-94. I am also very happy to note that Deve Gowda Ji, who was occupying the position of Prime Ministership just before Gujral Ji and who also justifiably used to be described as a humble farmer, was also a Member of this Standing Committee on Commerce. The present Prime Minister, Gujral Ji, was Chairman of that Standing Committee. This Committee had examined the Dunkel Draft and had come out with a very incisive observation. I should also mention that in almost a dozen meetings of the Standing Committee on Commerce, the attendance was 99 per cent. I had also attended those meetings. I quote from the Dunkel Draft.

"The Committee is of the view that the Dunkel proposal would discriminate against Indian Agriculture. The subsidies have to be limited to an upper bound 10 per cent of the value of the output for the developing countries. This may have grave implications for the poor resource farmers because with increasing cost of energy and other inputs sectorwise subsidey may exceed this limit.

The Committee is apprehensive that contrary to the above object including agriculture in the GATT, the end result of complying with the Dunkel proposal could enable the developed countries to capture the food markets of the developing countries and also to control the gene sequences, microbiological resources and genetic engineering. This could adversely affect their agriculture and food production."

Sir, in a fast forward as we do when we listen to good classical music or even other music, I should immediately come to this report because there is a reference in this report about the microbiological resources and genetic engineering. Today's *Times of India* carries a research of an international seminar of South-Asian countries held in Delhi, wherein I also spent some time listening to very, very remarkable presentations made by all the experts, which have come out with conclusions in this newspaper, a copy of which I am having here. Due to paucity of time and in view of the importance of this Bill, I should not encroach upon the time of the debate that will ensue. I don't want to elaborate upon this, but it clearly comes out with the fact that gene rich South-Asian countries should unite to protect bio-resources. They have expressed very grave apprehension about the implications of various attacks being launched by the developing world on the developing nations with regard to capturing our rich bio-diversity. So, I do not want to elaborate the relevance of this subject. Now, I come back to this report.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): You have to be a little brief. I know the importance of the subject.

SHRI M.A. BABY: I don't want to hide what the hon. Minister has just now shared with me. The entire House expressed its concern over the failure of the Government in not bringing the Women's Bill. I am very happy to say that the Minister has given me a feedback that the Women's Bill is going to be introduced in the Lok Sabha. I congratulate the Minister and the Government. May be, this is happening at the insistence of Members of this House and Members of the other House. Finally, this Government has woken up to protect the interests of women. I do not mind the Minister proceeding to the other House since a baby cannot object to women's interest being protected by the other House. I hope it will come to this House also.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): All babies are like that.

SHRI M.A. BABY: But you may have to send another Minister here. You have to send another Minister here to represent the Government.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): You try to be brief. Unfortunately, there was a time-limit fixed for you as well as for the Private Members Legislative Business.

SHRI M.A. BABY: I don't want to prevent the other discussion from being taken up. Before that I will conclude. But I should not let down the contributions made by my colleagues. Therefore, with this particular point, I am winding up. But the present Prime Minister has submitted this report in his earlier capacity as the Chairman of the Standing Committee on Commerce. Even the then Prime Minister, Shri Deve Gowdaji, cannot object to this Bill being passed because he was also a Member of the Standing Committee. He cannot say that he could not attend that Committee meeting due to preoccupation. While examining the minutes of the meeting I found that 99 per cent of the Committee's meetings were attended by Shri Deve Gowdaji also. So, I present that report to Shri Khalap Sahib for his consideration. Therefore, Sir, the Government would be doing justice if this Bill is passed. If it is not being passed, the Government can give an assurance that in some other form, they will come forward with it. But here, I will have to make a reference to an apprehension expressed by some legal luminaries—for example, Rajiv Dhawanji with whom I have had consultations. He is a votary of certain restrictions on the executive. He is a votary of certain legislations to the effect that the executive has to come to Parliament. He has said that this Bill will give the Government a *fait accompli*. That is his argument. He has said that your Bill is not sufficient. He has said that as per this Bill, when the Government, the executive, signs treaties and all that, the Government is required to come to Parliament with a resolution seeking ratification. The Government can then wash its hands off it stating that Parliament has ratified it. There is a point in what Shri Rajiv Dhawan says. It should not be passed. The Bill should be further strengthened. That is his argument. Still, I would like to submit that a ratification provision is better than no provision at all, in comparison with the present provision also. I want to state that there are various via media available. My suggestion is, to begin with, the Government can think of constituting a Parliamentary Committee consisting of Members from both the Houses of Parliament exclusively for vetting, processing and examining trade treaties. I fully agree with Khalapji that you cannot ask the executive to bring all types of treaties and agreements. It is impossible. Only to drive home the point, I put all these things. But it is impracticable. I fully agree with him. I am only concerned with trade treaties

because the North is basically waging a war against the developing countries through trade agreements, trade embargos and trade stipulations. Therefore, trade treaties, all trade treaties, should come to this Joint Parliamentary Committee. It can be named the Joint Committee on Trade Treaties or you can refer to it as the Committee on Treaties. Then that Committee can decide, in consultation with the representatives of the Government, what kind of treaties should come to that Committee and what kind of treaties should not come to that Committee. Maybe the Presiding Officer can also decide.

Sir, I do not want to make use of your remarkable indulgence towards me beyond a point. I would like to very seriously and sincerely suggest that there be an assurance from the Government that the Government can more seriously consider the constitution of a Joint Parliamentary Committee on Treaties so that that Committee can decide, in consultation with the Presiding Officer, and also after having taken the evidence or opinion of the Government representatives—even before the Government representatives go to the negotiating table, the Committee can be taken into confidence—what the implications of the treaty are, how it will help the interests of the country, how it may harm the interests of the country. In the given circumstances, perheps in the given unjust international situation, there would be something in a treaty that would harm our interests to some extent, but perhaps we will be forced to sign the treaty—I grant it—in view of certain other benefits that you may get. In international treaties also, there has to be a 'give-and-take' approach. You cannot have everything to your liking. Even though we are opposed to the WTO, even though America is very much for the WTO, on the form of the WTO, the European Community has gone against the United States of America, on the question of the embargo on Cuba. Things are not very simple. You would see that the country which was trying to push down the throats of the developing nations the idea of the WTO is finding itself at the receiving end on the question of trade embargo on Cuba, moved by the European community. So, a very complex situation is there. Therefore, I don't have any doubt in my mind that the Government has to find some mechanism to see that the sovereignty of the people is ensured through representatives of Parliament and the economic sovereignty of our country is not compromised, knowingly or unknowingly, as a result of trade treaties. Therefore, Sir, once again, while expressing my very sincere thanks to my hon. colleagues for having enriched the concept of this Bill through their contribution during the debate, I would like to submit that in case the Government is willing to seriously consider the suggestions, then I will not press the Bill. I have had a discussion with the hon. Prime Minister. When I gave the suggestion about the possibility of a Joint Parliamentary Committee, to be consituted on treaties, he said that he has to examine this particular suggestion which is being made by me. And that is the general consensus of this House. Out of the 35 Members who have participated in the discussion, only one Member has vehemently opposed this Bill. Shri Pranab Mukherjee appreciated the essence of the Bill without explaining certain constraints which would be imposed on the Government. It was because of his experience in the Government. Therefore, the general consensus of the House is in favour of the Bill. But I will not press the Bill provided the Government gives an assurance that it will very seriously consider, to begin with, the setting up of a Joint Parliamentary Committee on Treaties so that the sovereignty of the people can be finally established. Thank you very much, Sir, for your patient hearing.

THE VICE-CHAIRMAN (SHRI V.

NARAYANASAMY): I am sure the Government will consider the suggestion. Mr. Law Minister, do you want to say something?

SHRI RAMAKANT D. KHALAP: Sir, if you permit me, in a very short way, I will react to the final speech.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): There should be no reply to the reply given by the hon. Member.

SHRI RAMAKANT D. KHALAP: It is not a reply to the reply. I would like to react to a few points. (*Interruptions*).

SHRI M.A. BABY: In any case, I will not stand up to give a reply to the Minister.

SHRI RAMAKANT D. KHALAP: Sir, I can understand the intensity of the feelings of hon. Member, Mr. M.A. Baby, while piloting this particular Bill. When I spoke about the fetters that such a proposal would put upon the powers of the Executive, I had never intended to say that I consider Parliament to be a fetter on the rights of the Government. But I only wanted to say that the complexity of the international treaties and agreements is of such a nature that it is practically impossible for any Government to come before the House at every stage. There are agreements which are of bilateral nature, there are agreements which are of multilateral nature. Having accepted the principle that we want to live in harmony with our neighbours, with other countries of the world, after having accepted the U.N. Charter, after having accepted to become a member of the World Trade Organisation and after having become a member of the multifarious organisations in the world, where more than two countries share their views, experiences and even the resources, it is practically impossible for any Government to come before its Parliament before enacting any treaty. Therefore, once again when I refer to the U.S. position, in U.S. also, they have very sharply divided the powers of the Government and the Legislative. They have divided one part into Executive Agreements and other treaties which need to be ratified by Parliament, by the Senate.

SHRI M.A. BABY: Jaipal Reddy, Ji, I want to submit that the philosophical part for moving this Amendment Bill came from you.

SHRI RAMAKANT D. KHALAP: Referring once again to the position of the United States of America, I would say that we can very well draw a parallel comparison between the position of the United States of America and India. In U.S.A., there are Executive Agreements and there are other treaties which need to be ratified by the House, by the Senate. So also in our country there are certain treaties which need to be converted into a law here and others are in accordance with the laws which have already been enacted. And others are in accordance with the laws which have already been enacted. In that respect, there appears to be no difference whatsoever.

Sir, I did make a small mistake while pleading my case earlier, that there was no incident in the past where a particular treaty had been rejected, but. Shri Baby wants to refer to the patent Bill which was not accepted by the House. In that, the very point I was making was that this House ultimately is sovereign, Parliament is sovereign. The very fact that this patent Bill was not passed by this House shows the extent of power which our Parliament exercises over the exercise that the Executive performs. In that sense, since the Government has to come to Parliament to convert some of its treaties into laws so that they are applicable to the entire country, that shows the extent of power that we exercise, and it also compares very well with the position existing in the United States of America where certain treaties have to be consented to by the Senate.

Now, Sir, I also refer to the democratic

verdict that a popular Government enjoys because my learned colleague seems to be very agitated because of the statement that I made. Sir, we can't go by the internal position. In a treaty, which a country enters into with any power, maybe, bilaterally or multilaterally, it is a country, not a particular party in power, that does exist. It is the nation which exists. It is a nation entering into an agreement with another nation. And if you also want me to further argue, I would say that when a Prime Minister is called upon, when a leader of a political party is called upon to become the Prime Minister, and when, later on, he moves a motion for consent of the House and obtains the consent of the House, maybe, with the support of 14 parties or 15 parties, and with the support of another large party, supporting it from outside, what does it mean? It means, the popular verdict is translated into a motion of confidence. If you argue in this fashion ...(*interruptions*)...

SHRI TRILOKI NATH CHATURVEDI: There are arguments on both the sides.

SHRI RAMAKANT D. KHALAP: There should be arguments on both the sides. If you go to a multilateral forum, say, United Nations or NAM or SAARC, and then if you go and argue, "No, this Government which is being represented by Shri Gujral, cannot be considered as a representative Government of India because it belongs to the Janata Dal which enjoys strength of a particular number in the House. ... (*interruptions*)...

SHRI TRILOKI NATH CHATURVEDI: I don't think that that was mentioned by Shri Baby.

SHRI RAMAKANT D. KHALAP: But, Sir, when Mr. Baby said he would refrain from commenting upon what a democratic verdict would mean, his argument may be acceptable.

SHRI TRILOKI NATH CHATURVEDI: It is obvious that domestic politics will determine the strength of a Government or a Prime Minister; it may be true...(*interruptions*)...

SHRI RAMAKANT D. KHALAP: I will accept it, sir.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): It is only the majority view that prevails. It is only the majority view that concerns, and he spoke in a different context. Let us not enter into that controversy. Now you kindly come out of that.

SHRI RAMAKANT D. KHALAP: I think, he spoke in the context of a situation existing within a country, but in the comity of nations when two nations sit across the table, the nation speaks, not the political party. That is how I would look at it.

Now, I will take his further argument. He spoke about the effects of GATT, he spoke about the effects of Intellectual Property Rights, and he also referred to the outcome or to the suggestions made by the Parliamentary Standing Committee of Commerce where Shri Gujral was the Chairman. Now, Sir, what does it prove? This Report itself proves that the ultimate sovereignty lies with the House. If the Government of the day commits a mistake or enters into a particular agreement, it is tested here on the floor of the House. And secondly, I would further point out that in a multilateral agreement of the nature of the World Trade Organisation and all those things that went before it, the Dunkel proposal the GATT and all that...

The very fact that it is a very complex process of negotiation makes it absolutely clear that it is not possible for any Government to come before the House at every stage to obtain consensus.

SHRI M.A. BABY: Sir, Shri Khalap has referred to this report and said that it embodies the sovereignty of the

House. I beg to disagree with him. This report is useful for people like us who occasionally quote it to drive home a point. The Dunkel proposal....

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Khalapji, you know that the reports are recommendatory in nature. These reports are submitted to Parliament. As I told you, kindly come out of it. You kindly say whatever you want to say. Don't counter his arguments. There will be no end to it.

SHRI RAMAKANT D. KHALAP: Sir, I am not countering his arguments. Anyway, I will come back to his last request. He requested the Government to form a Parliamentary Committee for vetting trade and treaties. So far as this question is concerned, I wil say only one thing. I will not give any assurance that such a Committee would be formed. But I will go to the extent of saying that we will examine this proposal put forward by Shri M.A. Baby very, very seriously. We will examine it very seriously.

THE VICE CHAIRMAN (SHRI V. NARAYANASAMY) Very diplomatic answer.

SHRI M.A. BABY: We would wait and see how serious is the 'seriously'.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Mr. Baby, are you withdrawing this Bill?

SHRI M.A. BABY: Sir, I take the seriousness expressed by the hon. Minister in all seriousness. When the hon. Minister gives such an assuracne. I am not expected to doubt the depth of the seriouness. I hope that with respected colleagues like Shri Jaipal Reddy ...*Interruptions*...and the Prime Minister, Shri I.K. Gujral with his tradition of participating in the freedom struggle....

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY) I don't want all the encomiums. Are you withdrawing this Bill or not? Kindly say, "Yes", or "No."

SHRI M.A. BABY: I am coming to that point. I don't think a Government led by him with people like Shri Jaipal Reddy, Shri Khalap and Shri Indrajit Gupta, would ignore the impassioned...

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Why are you bringing Shri Indrajit Gupta into the picture?

SHRI M.A. BABY: Sir, he is the Home Minister.

SHRI TRILOKI NATH CHATURVEDI; Charity begins at home.

SHRI M.A. BABY: I don't think they would ignore the impassioned appeal of the Rajya Sabha Members. The Minister has also assured that they would seriously consider this suggestion. I hope they would seriously consider this suggestion. This is an assurance given to the House. Sir, there is the Assurances Committee which was also chaired by Shri Jaipal Reddy. With the expectation that they would stand by their assurance, I withdraw this Bill.

The Bill was, by Leave, Withdrawn.

SHRI RAMAKANT D. KHALAP: Sir, I express my gratitude to the hon. Member, Shri M.A. Baby, for this kind gesture.

THE PUBLIC INTEREST LITIGATION (REGULATION) BILL, 1996-CONTD.

SHRI TRILOKI NATH CHATURVEDI (Uttar Pradesh): Sir, I applaud the spirit in which this Bill has been brought before the House and also commend the labour that my friend, Shri Pachouri, has put in. While I find that the Bill claims to systematise and provide procedure for public interest litigation, it virtually makes recourse to public interest litigation almost negatory and in any case extremely difficult.

I wonder whether this is the right time to bring such a Bill before the House. I am saying this for two reasons. In the first place, you are aware that there has